



MINUTES

HUNTINGTON BEACH PLANNING COMMISSION

TUESDAY, DECEMBER 13, 2005

HUNTINGTON BEACH CIVIC CENTER

2000 MAIN STREET, HUNTINGTON BEACH, CALIFORNIA 92648

5:15 P.M. - ROOM B-8 (CITY HALL LOWER LEVEL)

CALL PLANNING COMMISSION MEETING TO ORDER

ROLL CALL: *A* *P* *P* *A* *P* *P* *P*
Dwyer, Scandura, Dingwall, Ray, Livengood, Burnett, Horgan
Commissioner Ray arrived at 5:22 p.m.
Commissioner Dwyer arrived at 5:27 p.m.

AGENDA APPROVAL

A MOTION WAS MADE BY HORGAN, SECONDED BY LIVENGOOD TO APPROVE THE PLANNING COMMISSION STUDY SESSION AGENDA OF DECEMBER 13, 2005, BY THE FOLLOWING VOTE:

AYES: Scandura, Dingwall, Livengood, Burnett, Horgan
NOES: None
ABSENT: Dwyer, Ray
ABSTAIN: None

MOTION APPROVED

A. PROJECT REVIEW (FUTURE AGENDA ITEMS) - NONE

B. STUDY SESSION ITEMS:

B-1. PLANNING COMMISSION BYLAWS, RULES AND PROTOCOL – Chair Ray

Chair Ray addressed the suggested revisions in the attachments to Study Session Item B-1. He advised that approval would take place at a later date. The Commission engaged in considerable discussions.

Deputy City Attorney Leonie Mulvihill provided legal guidance related to procedures and definitions as set forth in the Municipal Code. Commission Counsel provided advice concerning changes where potential penalties could exist. She further stated that the City Attorney recommends against adoption of Attachment 2.4 concerning sanctions against the Planning Commissioners and stated reasons thereof.

B-2. PUBLIC HEARING PROCESS – Chair Ray

Chair Ray stated reasons for changing the title to "Major Project Review Process," and recommended changes to Items 3.C), D), and G). Discussions ensued with the Commission and Commission Counsel concerning approval by City Council, discrepancy between the 72-hour notice and delivery of staff report, and discussion between the difference of minor vs. major project review.

Commission agreed to agendize the subject process for the next meeting.

C. AGENDA REVIEW (UPDATE ON ALL AGENDA ITEMS) – Herb Fauland and Chair Ray

Chair Ray stated reasons for reversing the order in which items E and F appear on the Planning Commission agenda.

Herb Fauland, Principal Planner, reported on:

- Public Hearing Item No. B-2 (Zoning Text Amendment No. 05-03 / Local Coastal Program Amendment No. 05-01 - Specific Plan Amendments). One late communication has been received from counsel to Bella Terra Associates.

Commissioner Dingwall asked for explanations concerning the appeal process for Non-Public Hearing Item D-1 Entitlement Plan Amendment No. 05-06 (amendment to Operating Hours – Tsunami Sushi). Staff advised the Commission and a general discussion ensued.

D. PLANNING COMMISSION COMMITTEE REPORTS - NONE

E. PUBLIC COMMENTS (Regarding Study Session portion of Meeting)

Dick Harlow, 211-B Main Street, asked the Commission for direction on when to speak on Non-Public Hearing item D-1.

F. PLANNING COMMISSION COMMENTS - NONE

6:45 P.M. – RECESS FOR DINNER

7:15 P.M. – COUNCIL CHAMBERS

CALL PLANNING COMMISSION MEETING TO ORDER

PLEDGE OF ALLEGIANCE – Led by Commissioner Burnett

ROLL CALL: *P P P P P P P*
Dwyer, Scandura, Dingwall, Ray, Livengood, Burnett, Horgan

AGENDA APPROVAL

A MOTION WAS MADE BY DINGWALL, SECONDED BY HORGAN, TO APPROVE THE PLANNING COMMISSION AGENDA OF DECEMBER 13, 2005, BY THE FOLLOWING VOTE:

AYES: Dwyer, Scandura, Dingwall, Ray, Livengood, Burnett, Horgan
NOES: None
ABSENT: None
ABSTAIN: None

MOTION APPROVED

A. ORAL COMMUNICATIONS

Steve Stafford, Huntington Beach, provided comments concerning the continuing problems at the Crystal Island project.

Dick Harlow, Huntington Beach, applicant for Non-Public Hearing item D-1 (Tsunami), stated that the purpose of the item is to allow lunchtime service in compliance with the condition of approval.

B. PUBLIC HEARING ITEMS

PROCEDURE: Commission Disclosure Statement(s), Staff Report Presentation, Commission Questions, Public Hearing, Discussion/Action.

B-1. ZONING TEXT AMENDMENT NO. 05-02 (INTERIOR PROPERTY LINES AND LATTICE FENCE EXTENSIONS WITH NEIGHBORHOOD NOTIFICATION)

Applicant: City of Huntington Beach **Request:** To eliminate the need for an Administrative Permit and the 300-foot radius Neighborhood Notification for a two-foot lattice fence extension on an interior property line fence. **Location:** Citywide/Residential Zones. **Project Planner:** Rosemary Medel

STAFF RECOMMENDATION: Motion to: "Per City Council direction, approve Zoning Text Amendment No. 05-02 with findings (Attachment No.1) and forward Draft Ordinance (Attachment No. 2), including the legislative draft to the City Council for adoption."

Jason Kelley, Assistant Planner, sitting in for Rosemary Medel, gave a presentation of the proposed project.

The Commission made the following disclosures:

- Commissioner Dwyer drove by fences.
- Commissioner Scandura attended the last study session discussion concerning the project and conversed with staff.
- Commissioner Dingwall - none
- Commissioner Livengood - none.
- Commissioner Horgan - none.
- Commissioner Burnett – none.
- Chair Ray, spoke with staff and also attended the study session.

Commissioner Burnett addressed the courtesy notification process to adjacent homeowners and asked if the language in Attachment 2.1 No. A.2b could be changed.

Chair Ray and staff engaged in discussions concerning applicability of the lattice fence to interior walls only, the City Council's adoption of the existing ordinance, and any recourse available to adjacent property owners if not provided with notification.

THE PUBLIC HEARING WAS OPENED:

Allen Bayliss, Huntington Beach, voiced concerns related to common wall property owner rights.

WITH NO ONE ELSE PRESENT TO SPEAK, THE PUBLIC HEARING WAS CLOSED.

Discussion ensued between the Commission and staff concerning common wall property owner rights as governed by City Ordinance versus a civil issue. Staff advised that the City is not involved when a wall is on a common property line.

A MOTION WAS MADE BY DINGWALL, SECONDED BY HORGAN, TO APPROVE ZONING TEXT AMENDMENT NO. 05-02 WITH FINDINGS FOR APPROVAL, BY THE FOLLOWING VOTE:

AYES: Dwyer, Scandura, Ray, Livengood, Burnett, Horgan
NOES: Dingwall
ABSENT: None
ABSTAIN: None

MOTION PASSED

Commissioner Dingwall stated that the foregoing vote is in error. He stated that he intended to vote yes in favor of the motion.

THE ABOVE VOTE WAS CORRECTED AS FOLLOWS:

AYES: Dwyer, Scandura, Dingwall, Ray, Livengood, Burnett, Horgan
NOES: None
ABSENT: None
ABSTAIN: None

MOTION PASSED

FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Planning Commission finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to City Council Resolution No. 4501, Class 20, which supplements the California Environmental Quality Act. The project is exempt because it involves minor amendments to Huntington Beach Zoning and Subdivision Ordinance, Chapter 230.88, subsection A.

FINDINGS FOR APPROVAL - ZONING TEXT AMENDMENT NO. 05-02:

1. Zoning Text Amendment No. 05-02 to amend Section 230.88, subsection A., Permitted Fences and Walls of the Zoning and Subdivision Ordinance is consistent with the objectives, policies, general land uses and programs specified in the General Plan because the amendment streamlines entitlement process for an extension of height to an existing fence thereby furthering the City's development goals.
2. In the case of a general land use provision, the zoning text amendment is compatible with the uses authorized in, and the standards prescribed for, the zoning district for which it is proposed. The amendment revises processing of entitlement and clarifies a permitted use within the zoning classification.
3. A community need is demonstrated for the change proposed as directed by the City Council.
4. Its adoption will be in conformity with public convenience, general welfare and good zoning practice by creating a zoning and subdivision ordinance more reflective of City priorities.

B-2. ZONING TEXT AMENDMENT NO. 05-03 / LOCAL COASTAL PROGRAM AMENDMENT NO. 05-01 (SPECIFIC PLAN AMENDMENTS) **Applicant:** City of Huntington Beach **Request:** To amend Specific Plan 4 (Huntington Harbour Bay Club, Specific Plan 11 (McDonnell Centre Business Park) and Specific Plan 13 (The Crossings) to include City Council notification and appeal language of the Planning Director's decision. The Local Coastal Program Amendment amends the City's Local Coastal Program implementing ordinances due to changes in Specific Plan 4, which is located in the Coastal Zone. **Location:** Specific Plans 4, 11 and 13's Project Area. **Project Planner:** Jason Kelley

STAFF RECOMMENDATION: Motion to: "Per City Council direction, approve Zoning Text Amendment No. 05-03 and Local Coastal Program Amendment No. 05-01 with findings for approval (Attachment Nos. 1 and 2) and forward Draft Ordinances and Resolutions (Attachment Nos. 3, 4, 6 & 8), including the legislative drafts to the City Council for adoption."

Jason Kelley, Assistant Planner, gave a presentation of the proposed project.

The Commission made the following disclosures:

- Commissioner Dwyer – none.
- Commissioner Scandura spoke with staff and Council Member Coerper.
- Commissioner Dingwall – none.
- Commissioner Livengood spoke with Council Members Hardy and Greene and conversed with Dick Harlow (project consultant) on the telephone.
- Commissioner Horgan – none.
- Commissioner Burnett – none.
- Chair Ray spoke with staff and attended the study session as did the Commissioners who were in attendance at the last study session.

Discussion ensued with staff concerning the degree of modifications to the Specific Plans and the approving authority in the case of an appeal.

Chair Ray questioned item no. (3) on page 2 of the late communication received from the law office of McKenna, Long & Aldridge concerning Specific Plan No. 13. Discussion ensued with staff. Commission Counsel explained the Specific Plan exception and stated that the Director of Planning determines minor vs. major modifications.

THE PUBLIC HEARING WAS OPENED:

James C. Hughes, Legal Representative for Bella Terra (McKenna, Long & Aldridge) deferred to speak until other public comments were concluded.

Mike Adams, consultant, representing the Huntington Beach Chamber of Commerce Board of Directors, spoke in opposition to the request, referencing the Chamber's letter (Attachment No. 11) emphasizing the need to streamline projects. Mr. Adams stated that approval of the request would slow down the process.

Mario Stavale, Boeing Realty Corporation, spoke in opposition to the request stating that it is not necessary to amend the McDonnell Center Business Park Specific Plan. Mr. Stavale stated that approval would yield additional bureaucracy. He stated that the existing Specific Plan brings clarity of expectations and requirements.

Steve Stafford, Huntington Beach, spoke in support of the request stating that the Planning Commission should be involved in order to maintain checks and balances.

Lindsay Parton, Bella Terra, spoke in opposition to the request stating that the amendment would create more bureaucracy and time. Ms. Parton stated that when they purchased the Bella Terra property, they relied on certain entitlement rights.

James C. Hughes, Legal Representative for Bella Terra, stated that they have relied on the Specific Plan "as is." Mr. Hughes spoke in opposition to the request stating that minor modifications would get caught in the appeal process. He stated that the appeal process impacts equity investment and capital expense. Mr. Hughes urged the Planning Commission not to change the Specific Plan.

Dick Harlow, Huntington Beach, spoke on behalf of Boeing. Mr. Harlow spoke in opposition to the request stating that the purpose of the McDonnell Center Business Park Specific Plan is to provide certainty and was approved in good faith. He stated that the request is a step back. Mr. Harlow urged the Planning Commission to deny the request.

WITH NO ONE ELSE PRESENT TO SPEAK, THE PUBLIC HEARING WAS CLOSED.

Commission questions/comments included:

- The 60/70 days timeframe to prepare for a hearing including reports and notification.
- Minor modifications and the negative impact on streamlining a project if the request were approved.
- The appeal process and eligible appellants as applicable to the different Specific Plans.
- Lack of a compelling reason for minor modifications to go to City Council.
- Approval of the request would serve to dissuade other businesses.
- A council member's right to appeal if a decision is contrary to the public.
- Reluctance to disagree with the City Council's request to approve.
- The difference between the three subject Specific Plans and the 10 other Specific Plans.
- Whether or not the proposed request would impact development agreements.
- "Deviations" as set forth in Attachment 7.8.
- Require notification to Planning Commission, City Council and City Administrator.

A MOTION WAS MADE BY SCANDURA, SECONDED BY DWYER, TO DENY ZONING TEXT AMENDMENT NO. 05-03 WITH FINDINGS.

Commissioner Livengood moved to amend the motion to require notification as previously discussed to include the City Council, City Administrator, and Planning Commission.

Discussions ensued.

COMMISSIONER SCANDURA WITHDREW HIS PREVIOUS MOTION AND MADE A MOTION, SECONDED BY BURNETT, TO APPROVE ZONING TEXT AMENDMENT NO. 05-03 WITH CHANGES TO INCLUDE NOTIFICATION TO THE CITY COUNCIL, CITY ADMINISTRATOR AND PLANNING COMMISSION, BY THE FOLLOWING VOTE:

AYES: Scandura, Ray, Livengood, Burnett
NOES: Dwyer, Dingwall, Horgan
ABSENT: None
ABSTAIN: None

MOTION PASSED

Chair Ray stated that he intended to vote against the motion.

THE ABOVE RE-VOTE WAS AS FOLLOWS:

AYES: Scandura, Livengood, Burnett
NOES: Dwyer, Dingwall, Ray, Horgan
ABSENT: None
ABSTAIN: None

MOTION FAILED

A MOTION WAS MADE BY RAY, SECONDED BY DINGWALL, TO APPROVE ZONING TEXT AMENDMENT NO. 05-03 WITH THE NOTIFICATION REQUIREMENT TO INCLUDE THE CITY COUNCIL, CITY ADMINISTRATOR AND PLANNING COMMISSION, AND THE APPEAL PROCEDURE AS SPECIFIED BY THE FOLLOWING VOTE:

AYES: Dingwall, Ray, Horgan
NOES: Dwyer, Scandura, Livengood, Burnett
ABSENT: None
ABSTAIN: None

MOTION FAILED

A MOTION WAS MADE BY DWYER, SECONDED BY SCANDURA, TO DENY ZONING TEXT AMENDMENT NO. 05-03.

Staff advised the Commission that in order to deny the request, they are required to amend the motion and make findings for denial. Commission Counsel confirmed that the Commission would have to amend the foregoing motion to state findings for denial.

Discussion ensued.

Commissioner Dwyer called for the question.

ACTION WAS TAKEN ON THE PREVIOUS MOTION AS AMENDED WITH FINDINGS FOR DENIAL BY THE FOLLOWING VOTE:

AYES: Dwyer, Scandura, Livengood, Burnett
NOES: Dingwall, Ray, Horgan
ABSENT: None
ABSTAIN: None

MOTION PASSED

FINDINGS FOR DENIAL - ZONING TEXT AMENDMENT NO. 05-03

1. Zoning Text Amendment No. 05-03 to amend various sections of Specific Plan No. 4 (Huntington Harbour Bay Club), Specific Plan No. 11 (McDonnell Centre Business Park) and Specific Plan No. 13 (The Crossings) is not consistent with the goals, objectives and policies of the General Plan because the amendment does not achieve the goals of streamlining as reflected in the following General Plan policy:

Economic Development Element:

ED 2.3.1 - Strive to reduce all discretionary permit and processing time.

2. A community need is not demonstrated for the proposed zoning text amendment because there is insufficient evidence to prove that the existing review process is not adequate.
3. Its adoption will not be in conformity with public convenience, general welfare and good zoning practice because there is adequate control through the existing review process. Also, the proposed appeal language adds uncertainty to the review process and is inconsistent with past City actions relative to the Specific Plans

C. CONSENT CALENDAR

C-1. PLANNING COMMISSION MINUTES DATED SEPTEMBER 13, 2005

RECOMMENDED ACTION: Motion to: "Approve the September 13, 2005 Planning Commission Minutes as submitted."

A MOTION WAS MADE BY LIVENGOD, SECONDED BY DWYER, TO APPROVE THE SEPTEMBER 13, 2005, PLANNING COMMISSION MINUTES AS MODIFIED.

AYES: Dwyer, Scandura, Dingwall, Ray, Livengood, Burnett
NOES: None
ABSENT: Horgan (out of room)
ABSTAIN: None

MOTION APPROVED

D. NON-PUBLIC HEARING ITEMS:

- D-1. ENTITLEMENT PLAN AMENDMENT NO. 05-06 (AMENDMENT TO OPERATING HOURS – TSUNAMI SUSHI):** **Applicant:** Dick Harlow **Request:** To amend the hours of operation to permit lunch time food service in compliance with condition of approval No. 5 a. of Conditional Use Permit No. 98-29. **Location:** 17236 Pacific Coast Highway **Project Planner:** Paul Da Veiga

STAFF RECOMMENDATION: Motion to: "Receive and file the report on Entitlement Plan Amendment No. 05-06".

Paul Da Veiga, Associate Planner, gave a presentation of the proposed project.

The Commission, Staff and Commission Counsel engaged in discussions concerning the process for an Entitlement Plan Amendment and the Commission's role in taking action on this request. Commissioner Dingwall questioned how it was possible to receive and file when action has not yet been taken.

A MOTION WAS MADE BY LIVENGOOD, SECONDED BY HORGAN, TO RECEIVE AND FILE ENTITLEMENT PLAN AMENDMENT NO. 05-06, BY THE FOLLOWING VOTE:

AYES: Dwyer, Scandura, Ray, Livengood, Burnett, Horgan
NOES: Dingwall
ABSENT: None
ABSTAIN: None

MOTION PASSED

E. PLANNING ITEMS

E-1. CITY COUNCIL ACTIONS FROM PREVIOUS MEETING

Scott Hess, Planning Manager – reported on the items from the previous City Council meeting.

E-2. CITY COUNCIL ITEMS FOR NEXT MEETING

Herb Fauland, Principal Planner – reported on the items scheduled for the next City Council meeting.

E-3. PLANNING COMMISSION ITEMS FOR NEXT MEETING

Herb Fauland, Principal Planner – reported that the December 27, 2005 meeting has been canceled due to the Holiday. Mr. Fauland reported on the items scheduled for the January 10, 2006 Planning Commission meeting.

F. PLANNING COMMISSION ITEMS

F-1. PLANNING COMMISSION REQUEST ITEMS – NONE

F-2. PLANNING COMMISSION COMMENTS

Commissioner Dwyer – Thanked Commissioner Horgan for the homemade jams. He also thanked outgoing Chair Ray for his leadership as Chair.

Commissioner Scandura – Welcomed Commissioner Burnett back from maternity leave. He also thanked outgoing Chair Ray for his leadership as Chair.

Commissioner Dingwall – Wished everyone happy holidays.

Commissioner Ray - Welcomed Commissioner Burnett back from maternity leave. Announced the Planning Commission holiday celebration for Thursday, December 15, 2006, at 6:00 p.m. at Chimayo Restaurant. He also announced the election of Chair and Vice-Chair will occur at the January 10, 2006 meeting. He concluded by summarizing the past year and the accomplishments of the Planning Commission, thanked all those involved and wished everyone happy holidays.

Commissioner Livengood - Thanked outgoing Chair Ray for his leadership as Chair.

Commissioner Burnett – Thanked outgoing Chair Ray for his leadership as Chair.

Commissioner Horgan – Thanked outgoing Chair Ray for his leadership as Chair.

ADJOURNMENT:

Adjourned at 10:05 p.m. to the Holiday Celebration at Chimayo Restaurant, 315 Pacific Coast Highway, at 6:00 p.m. on Thursday, December 15, 2005.

NOTE: The regularly scheduled meeting of December 27, 2005 has been cancelled.

HZ:HF:rk

APPROVED BY:

Howard Zelefsky, Secretary

Steve Ray, Chair